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U.S. Citizenship
and Immigration
Services

22

[REDACTED]

FILE: [REDACTED]
MSC 01 325 60837

Office: NEW YORK

Date: **MAR 04 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that affidavits submitted in support of the applicant's claim were neither credible, nor amenable to verification.

On appeal, the applicant states that insufficient efforts were made to contact the affiants, and that due to genital tumor complications his child was delivered late. The applicant does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either

request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated September 17, 2007, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant stated that since his entry on May 30, 1980, he had departed the United States once, for Canada, on May 6, 1987, and returned to the United States on June 15, 1987. The director also noted that the applicant had a child born on April 16, 1988, in Bangladesh. In addition, the director noted that the applicant had submitted affidavits that were neither credible, nor amenable to verification. The director determined that the applicant could not establish his continuous residence throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, dated December 18, 2007, the director denied the application based on the reasons stated in the NOID. The director noted that in the applicant's response to the NOID, he stated that his daughter's date of birth was erroneously stated (due to typographical error) as April 16, 1988, however, the child's actual date of birth is April 16, 1981. The director, however, pointed out that the applicant claimed that he entered the United States in May 1980 and that his wife had never been to the United States, therefore, it was not possible for his daughter to have been conceived before he left Bangladesh. The director also noted that the applicant provided several affidavits in support of his claim that he resided continuously in the United States during the requisite period, however, the affiants did not provide any identity documents, proof that the affiants were in the United States during the statutory period, nor proof that there was a relationship between the affiants and the applicant. The director determined, therefore, that the affidavits submitted were neither credible, nor amenable to verification.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from prior to January 1, 1982, through May 4, 1988.

The record reflects that the applicant submitted numerous affidavits, letters, and other documentation, as evidence to support his Form I-485 application. The AAO has reviewed the

entire record as it pertains to the requisite period. Here, the submitted evidence is neither probative, nor credible.

Contrary to the applicant's claim that he has resided in the United States since prior to January 1, 1982, the record indicates that the applicant has submitted questionable documentation.

The applicant claims that he entered the United States in May 1980, and since his arrival, he departed once, to Canada, on May 6, 1987, and returned to the United States on June 15, 1987. In support of his application, the applicant submitted several affidavits and letters attesting to his continuous residence in the United States since May 1980. However, the record reflects that information on the applicant's applications contradict his claim of continuous residence. Specifically, on his Form I-485 application, signed by the applicant on July 2, 2001, he indicated that he had only one child, a girl, born on April 16, 1988. On his Form I-687 application, however, which the applicant signed on December 1, 1992, he states that the child was born on April 16, 1980. Yet, when the director raised the issue that the applicant could not have fathered a child born in Bangladesh on April 16, 1988 in that he had departed Bangladesh in May 1980, and he did return to Bangladesh since his arrival, and his wife did not depart Bangladesh, the applicant changed the information he had provided and stated that he had made a typographical error in listing April 16, 1988 as the child's date of birth, but, the child was actually born on April 16, 1981. The director noted, in her denial notice, that due to the length of time between the applicant's claimed entry into the United States (May 1980) and the April 16, 1981 claimed date of birth (which is over 10 months), the applicant could not have fathered the child. The applicant now states (on appeal) that due to a medical complication the child was delivered late. The applicant, however, does not provide any medical documentation to substantiate this assertion. The applicant has failed to reconcile these discrepancies in the record. There is no documentation whatsoever to explain how the applicant had been in the United States since May 1980, and be able to father a child who was born in Bangladesh over 10 months later. The applicant has failed to overcome the evidence of record. The record, as it stands, now has three distinctly different dates of birth for the same child. The applicant cannot simply change the evidence or his testimony when it suits him. The applicant's record clearly contradicts his claim that he has continuously resided in the United States since prior to January 1, 1982.

The above discrepancies cast considerable doubt on whether the applicant's claim that he has been in the United States since May 1980 is true, and whether the affidavits and letters that the applicant submitted in support of his claimed residence are genuine. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the contradicting evidence in the record. Given the inconsistencies, discussed above, the remaining testimony is deemed not credible. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore,

the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.